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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

KYSHANNA BUFORD,

Plaintiff and Respondent,

v.

FELICIA R. JOHNSON,

Defendant and Appellant.

B288801

(Los Angeles County
Super. Ct. No. 18STRO00474)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Yury Galperin, Temporary Judge.
(Pursuant to Cal. Const., art. VI, §21.) Affirmed.

Law Offices of Charles O. Agege and Charles O. Agege for
Defendant and Appellant.

No appearance by Plaintiff and Respondent.

INTRODUCTION

Appellant Felicia R. Johnson (Felicia) challenges a restraining order protecting respondent Kyshanna Buford (Kyshanna).¹ Felicia contends substantial evidence does not support the trial court’s implied factual finding of “harassment” and the trial court abused its discretion in conducting the hearing in her absence. We find substantial evidence to support the factual findings of the trial court and no abuse of discretion. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Request for Civil Harassment Restraining Order*

On January 19, 2018, Kyshanna filed a request for a civil harassment restraining order (CHRO) against Felicia, pursuant to Code of Civil Procedure section 527.6.² She sought protection for herself and “other family or household members”—her two minor sons and Kervelle Tyrone Johnson (Tyrone), whom Kyshanna identified as her “fiancé.”³ According to Kyshanna, Felicia had been coming to Kyshanna’s home, stalking Kyshanna because she was dating Tyrone, Felicia’s ex-husband.

¹ Kyshanna failed to file a respondent’s brief, despite our notice to her per California Rules of Court, rule 8.220, subdivision (a)(2).

² All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

³ In the record, the parties refer to Mr. Johnson by his middle name Tyrone; we opt to do the same to avoid confusion, as Felicia and Tyrone share the same last name.

Kyshanna's request described the most recent incident of harassment: on January 18, 2018, at approximately 7:30 p.m., Felicia allegedly "came to [her] house . . . threat[en]ing to kill [her] and [her] son and was trying to kick [her] door in." Although she indicated on one page of her CHRO request that Felicia showed up that evening "*with a gun*, asking [Kyshanna] to come outside to harm [her]", Kyshanna indicated "I don't know" in response to item 10 of the CHRO request which asked whether Felicia possessed or owned a gun or firearm. (Italics added.) Kyshanna stated Felicia "stayed in front of [her] house for 1 hour while [she] waited on police"; although the police arrived, no emergency protective orders were issued. According to Kyshanna, her son, aunt, Tyrone, and Tyrone's friend had all witnessed the incident.

Kyshanna also alleged Felicia had come to her place of residence "over 10 times threat[en]ing [her] life. Leaving messages and notes on [her] property. Kicking [her] door, hitting [the] windows of [her] home, yelling and screaming disturbing my n[ei]ghbors. Sending people to [her] house to harass [her] and stalking [her] and following [her]." (*Sic.*) Kyshanna requested that the court order Felicia not to harass, intimidate, attack, strike, stalk, threaten or contact her—"either directly or indirectly, in any way, including but not limited to, in person, by telephone, in writing, by public or private mail," etc. She requested that the court issue stay-away orders, barring Felicia from coming within 100 yards of Kyshanna, her children, Tyrone, her home, her vehicle, her place of work, and her children's school.

Kyshanna attached two letters from Felicia to her CHRO request. The letters are dated June 8, 2017 and August 23, 2017.⁴ Relevant portions of the June 8, 2017 letter include:

1. “Information for your sister regarding her so-called man. A tip for you first Ms. Pooh, if you had not reacted like you were sleeping with my husband, you may have found out some valuable information for your sister since she is dating him. It pays sometimes to just listen.”
2. “Your sister is just one of the few fires I’ve had to put out courtesy of my husband.”
3. “Your sister may want to listen very carefully, I’m not going anywhere, she may want to ask my husband about her man going out to dinner with his wife the night before . . . until well after 11 pm @ BJ’s Restaurant. I was rubbing on his inner thigh under the table and he was smiling and loving it. Don’t sound like a man who is divorced or separated to me?”
4. “Your sister may want to ask her imaginary man . . ., why did his wife confront him at Olive Garden on May 18th with some young ass girl that was about our daughter’s age, having dinner with her? Newsflash – he met her 6 months ago and she is 6 months pregnant right now.” Tyrone “seems to be going through a mid

⁴ The June 8, 2017 letter is approximately four pages long, with the subject “A message for the sisters”; it is meant for a “Ms. Pooh,” who appears to be Kyshanna’s sister. The August 23, 2017 letter is approximately one page long, with no subject line, and was meant for Kyshanna.

life crises. He seems to have an appetite for all these just got out of high school bitches in their twenties. The same age as our children. So im guessing your sister fall into that range of mid 20's early 30's." (*Sic.*)

5. "Now wasn't Tyrone just over to y'all house on May 11th for about 2 hrs and 15 minutes but yet he took the pregnant girl to Olive Garden on May 18th."
6. Kyshanna "should also ask [Tyrone] about the 26 year old girl Tiffany that he was just paying to sleep with him for months"
7. Kyshanna "should ask [Tyrone] about Kimberly of L.A. she has been on his nuts for over 20 years, but she found out the hard way that I'm no[t] going anywhere until I get ready, but trust me, it will cost my husband big time, believe that."
8. "[O]n May 28th, you should have seen [Tyrone's] face when he got home and he had to answer to the lie he told me about being over his cousin's house, yet he was with your sister. I'm tired of playing games with my husband, so I have pictures if your sister would like to see them."
9. "My husband has a few drive by bitches as he calls them." "Maybe your sister is one of th[em]."
10. "Every time your sister kisses my husband it's my pussy she taste along with Kimberly, Tiffany, Diamond and every other bitch he has fucked with during the relationship."
11. "Just know this he is my business and if you want me to stay out of y'all business you will stay out of mine. [¶] Not going anywhere!"

Relevant portions of Felicia's August 23, 2017 letter include:

1. "You really need to put a leash on your dog. I guess you had to learn the hard way that you couldn't have possibly thought he would be faithful. Why is your man at his other girlfriend/baby momma house right now and it's after 2:30 am in the morning."
2. "I guess you're not enough woman for him either. I told you my husband was sloppy. Wasn't he just over your house hours earlier and he's already thinking about another woman?"
3. "Of course this is not the first time you've been cheated on. My husband has been to motels with someone other than you. I have those pictures too."
4. "You know he only likes coming over the[re] because he says you love to suck dick. You should never put anything in your mouth that can get up and walk away."
5. "I know all about the role you played in that Identity Theft that you and my husband tried to do to me"
"[T]he police ha[ve] sent the case to the District Attorney's Office for prosecution."

On January 19, 2018, the court declined to issue a temporary restraining order⁵ because (1) "the facts as stated in [Kyshanna's CHRO request] do not sufficiently show acts of

⁵ "A temporary restraining order is initially available to stabilize a situation; a preliminary injunction can follow. Thereafter the matter can proceed to a full trial." (*Byers v. Cathcart* (1997) 57 Cal.App.4th 805, 811.)

violence, threats of violence, or a course of conduct that seriously alarmed, annoyed, or harassed [Kyshanna] and caused substantial emotional distress”; and (2) there was “insufficient notice” to Felicia. The court ordered personal service of the CHRO request paperwork on Felicia “at least five days before the hearing,” set for February 9, 2018.

B. *Response/Opposition to CHRO Request*

On February 5, 2018, Felicia filed her response to Kyshanna’s CHRO request. She indicated she has “never threatened the lying Ms. Buford. Have no reason to. She needs to get over herself. She thinks because she is dating my husband of 25 years . . . that I want to commit harm against her. I’ve only tried to warn her of my husband’s infidelity.” She stated she had “never come to [Kyshanna’s] home 10 times” but has “only been there for the first time on 06/07/17 and even then I did not know who she was. I asked her because she was outside, did she know Tyrone and she said yes[.] This conversation took place with her standing in her yard and me in my car on the public street. I never even got out of my car that day.” Felicia confirmed she “did write Kyshanna two letters only, which she has attached. There is not one threat in any of the letters given, which was placed on her porch both times.” Felicia stated she had no contact with Kyshanna from the date of “the last letter given . . . in August 2017 . . . up until 01/18/18” when Tyrone accused Felicia of sending someone to Kyshanna’s home to buy drugs—an accusation that Felicia denied. Felicia stated she “went over there on 01/18/18 to clear [her] name” and to tell Kyshanna “to stop lying.” She also stated that Tyrone called her on January 19, 2018, and informed her that Kyshanna “wants to file a restraining order on [her].”

Felicia admitted to coming to Kyshanna's house "only a total of 4" times—"[t]he first time June 7, 2017, June 8, 2017 to drop off first letter on her porch, August 23, 2017 to drop off second letter to let her know my husband was with another female at 2:30 am after leaving her house, and January 18, 2018 when I went to clear my name." She explained that she has "no time to harass" Kyshanna because she works "two jobs." According to Felicia, "sending [Kyshanna] two letters and leaving them on [her] porch and talking to [her] twice from [the] car, on a public street[] does not fit the definition of harassment. That is a total of 4 contacts and two of them were by letter only."

Felicia denied owning or possessing guns or firearms. She claimed that on January 18, 2018, Kyshanna "was the one who actually said to me, and I quote, 'Let me go get my gun.' I told her go get it. Again I was on the public street in my car, . . . [and] when I got there I blew the horn, so all this nonsense of kicking down her door is not true." In her response, Felicia also contended Kyshanna lied when she said her neighbors were disturbed as a result of Felicia's harassment, and said: "Your neighbors were not disturbed, you were disturbed because your neighbors found out on January 18, 2018 that you were playing house with a married man and co-signing for D**k. Don't blame me for your poor choices in men." She also accused Kyshanna of falsely stating there were witnesses and accused her of "trying to build her witness list."

Finally, Felicia's last sentence in her attachment to the response stated she "was not personally served" with the CHRO request, and it "was given to someone in [her] building" instead. However, the proof of personal service, dated and signed by Clifford Whetstone (not a registered process server) on February

3, 2018 and filed on February 9, 2018, avers Whetstone served Felicia on February 3, 2018 at 9:00 p.m. at Unit C of an apartment building in Long Beach.

C. *Hearing and Ruling*

Felicia was not present at the hearing on February 9, 2018. The court asked Kyshanna why she needed a restraining order against Felicia. Kyshanna stated Felicia had come to her house on numerous occasions. She stated Felicia “banged on [her] door in the wee hours, honked the horn, disrupted neighbors, . . . left letters.” She stated Felicia “has been harassing [her] since June about her ex-husband. It has been nonstop.”

The court asked Kyshanna about the allegation in her paperwork that a weapon was used. Kyshanna responded Felicia “was threatening for [Kyshanna] to come outside and that she was going to kill [her] with her so-called husband. He has a restraining order out on her [too].” She reminded the court her elderly aunt and two kids were at her residence during the January 18, 2018 incident.

The court then ruled: “Based on [Kyshanna’s] testimony, based on the paperwork, I find that there is sufficient evidence for the civil harassment restraining order. I am going to issue the restraining order for a period of three years. Standard order.” The court did not include Tyrone or anyone else as additional protected persons.

Felicia timely appealed.

DISCUSSION

Felicia contends the evidence is insufficient to support the factual findings necessary for the court’s granting of the CHRO. She also contends the court abused its discretion in proceeding on

February 9, 2018 because she was not properly served with Kyshanna's CHRO request.

A. *Standard of Review*

We review the issuance of a restraining order for abuse of discretion and the factual findings in support of the restraining order for substantial evidence. (*Parisi v. Mazzaferro* (2016) 5 Cal.App.5th 1219, 1226; *Bookout v. Nielsen* (2007) 155 Cal.App.4th 1131, 1137–1138 (*Bookout*).)

In reviewing the trial court's findings, the "appropriate test on appeal is whether the findings (express and implied) that support the trial court's entry of the restraining order are justified by substantial evidence in the record." (*R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 188.) Whether the facts are legally sufficient to constitute civil harassment within the meaning of section 527.6 is a question of law reviewed de novo. (*Ibid.*) "We resolve all factual conflicts and questions of credibility in favor of the prevailing party and indulge in all legitimate and reasonable inferences to uphold the finding of the trial court if it is supported by substantial evidence which is reasonable, credible[,] and of solid value." (*Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762 (*Schild*).) A ruling by a trial court is presumed to be correct and any ambiguities are resolved in favor of affirmance by the reviewing court. (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 631; *Wilson v. Sunshine Meat & Liquor Co.* (1983) 34 Cal.3d 554, 563 ["no express findings are required" and "it is presumed that the court followed the law."] Thus, if the trial court's ruling does not expressly decide a particular factual issue on the record, " "[a]ll intendments and presumptions are indulged to support it on matters as to which the record is silent" " (*Wilson*, at p. 563.)

In reviewing the issuance of a restraining order, “we will only find an abuse of discretion when the trial court exceeds the bounds of reason or disregards the uncontradicted evidence.” (*Bookout, supra*, 155 Cal.App.4th at p. 1140.) The burden of showing an abuse of discretion by the trial court rests with the party challenging the issuance of the order. (*Ibid.*)

B. *Substantial Evidence Supports the Factual Finding of Harassment by Felicia.*

Section 527.6 authorizes a “person who has suffered harassment” to obtain a temporary restraining order and, after a hearing, an order prohibiting harassment up to five years. (§ 527.6, subds. (a)(1) & (n).) “Harassment” under this section is defined as follows: “unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner.” (*Id.*, subd. (b)(3).) A “course of conduct” is defined as “a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including . . . sending harassing correspondence to an individual by any means.” (*Id.*, subd. (b)(1).) If the court “finds by clear and convincing evidence that unlawful harassment exists, an order shall issue prohibiting the harassment.” (*Id.*, subd. (i).)

Felicia reminds us the trial court had initially denied a temporary restraining order on January 19, 2018 because Kyshanna did not allege sufficient facts to establish harassment. She contends the testimony presented by Kyshanna at the hearing on February 9, 2018 was simply “a rehash” of the facts stated in the CHRO request filed on January 19, 2018. Nothing new was added, which “then begs the question - - if the facts weren’t enough then, why are they enough now?” We disagree that this was simply a “rehash.” At the hearing the trial court took the opportunity to question Kyshanna about the allegations in her CHRO request. Hearing the live testimony of a witness adds another dimension to the written allegations as it gives the court a window into the credibility of the accuser, which oftentimes strengthens or weakens the necessity for the requested remedy.

Felicia argues “sufficient evidence” does not equate to “clear and convincing evidence,” and that the trial court’s order should be reversed on that ground alone. We disagree. We note the trial court did not expressly state on the record that it made its finding by clear and convincing evidence; instead the court stated: “Based on [Kyshanna’s] testimony, based on the paperwork, I find that there is *sufficient evidence* for the civil harassment restraining order.” (Italics added.)

Contrary to Felicia’s contention, we interpret the trial court’s statement that there is “sufficient evidence for the civil harassment restraining order” to mean that the evidence is sufficient to grant the CHRO, not that the evidence is established by some “sufficient” as opposed to a “clear and convincing” standard.

And the evidence does meet the substantial evidence test as it established a pattern of harassing conduct. Although Felicia argues that she did not go to Kyshanna's house 10 times as alleged, she admitted to going to her home "a total of 4" times—June 7, 2017; June 8, 2017; August 23, 2017; and January 18, 2018. Felicia's letters to Kyshanna amounted to "harassing correspondence" directed at a specific person, that would cause a reasonable person to suffer substantial emotional distress, per the language of section 527.6; this included: 1) likening Kyshanna to "one of the few fires" that Felicia "had to put out courtesy of [her] husband"; 2) calling Kyshanna a "drive by bitch" for Tyrone; and 3) repeating that she is "not going anywhere" and if Kyshanna "wants [Felicia] to stay out of y'all business" then Kyshanna "will stay out"

Felicia implied in her letters to Kyshanna that she was watching/stalking her. For instance, in her June 2017 letter, she asked, "wasn't Tyrone just over to y'all house on May 11th for about 2 hrs and 15 minutes," indicating that Felicia was near Kyshanna's home, watching and keeping time. In her August 2017 letter, she told Kyshanna that Tyrone is "at his other girlfriend/baby momma house right now and it's after 2:30 am in the morning" and asked her: "Wasn't he just over your house hours earlier and he's already thinking about another woman?"

Felicia also made remarks of a threatening nature by informing Kyshanna about the other women Tyrone has allegedly had affairs with, and how, for example, "Kimberly of L.A. . . . *found out the hard way*" that Felicia is not going anywhere. (Italics added.) In her own response to the CHRO request, Felicia admitted to blowing the horn of her car when she arrived at Felicia's house on January 18, 2018. We believe the foregoing

constitutes substantial evidence that Felicia engaged in a pattern of harassing conduct.

Finally, as Felicia points out, Kyshanna's CHRO request included inconsistent information as to whether Felicia possessed a gun during the January 18, 2018 incident. However, Kyshanna cleared up that confusion during the hearing when she answered the court's inquiry about her allegation of Felicia's use of a weapon.

C. The Trial Court Did Not Abuse its Discretion in Proceeding with the Hearing on February 9, 2018.

Felicia contends the court abused its discretion by proceeding with the February 9, 2018 hearing in Felicia's absence when Felicia—by way of her response filed February 5, 2018—had “categorically and unequivocally denied” being personally served with Kyshanna's moving paperwork on February 3, 2018. Felicia also argued the validity of service “was clearly put in issue” because of the discrepancy of the handwriting in paragraphs 5 and 6 of the proof of personal service. We disagree.

The trial court made its ruling “based on [Kyshanna's] testimony” and “based on the paperwork”; we believe “the paperwork” includes all of the pleadings filed in anticipation of the hearing, including Felicia's response and Kyshanna's proof of personal service. The trial court acted within its discretion when it (impliedly) rejected Felicia's version of events and accepted the process server's description of personal service.

Even if we were to assume error, it would be harmless, as Felicia’s response (filed with the court four days before the hearing) makes clear she received and read Kyshanna’s paperwork and had actual notice of the hearing date.⁶

DISPOSITION

The order granting respondent’s request for a civil harassment restraining order is affirmed. Respondent has yet to appear in this matter and thus has incurred no costs at the appellate level; appellant is to bear her own costs.

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STRATTON, J.

We concur:

GRIMES, Acting P. J.

WILEY, J.

⁶ In her response, Felicia made clear she received and read Kyshanna’s paperwork: “Kyshanna wants to talk about I threatened her with violence, it’s funny she should bring up the word ‘gun’ in her complaint”